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November 28, 2020

Via ECF

Honorable Laura Taylor Swain
United States District Court Judge
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

MEMO ENDORSED

Re: Request for Extension of Surrender Date
USA v. Fertides 18 CR. 319

Dear Judge Swain:

Your Honor sentenced Mr. Castillo to a prison term of 12 months and one day on October 6, 2020, with the provision that he voluntarily surrender to the prison designated by the Bureau of Prisons ("BOP") on December 2, 2020, which is 4 days from today. To date, neither Mr. Castillo nor I have heard from Probation as to where Mr. Castillo is designated. This letter typically arrives a week or more ahead of time in order that defendants can settle their affairs prior to reporting to prison. Not only because Mr. Castillo has not received notice of his designation, but also in light of the surge of COVID-19 in our country at present, it is respectfully requested that Mr. Castillo's surrender date be extended to a date in January, 2021.

While the defense did request a surrender date in the new year at sentencing, and that request was rejected by Your Honor, in light of the two issues set forth above, the defense once again respectfully requests that Your Honor adjourn the date that Mr. Castillo shall report to the prison that the BOP will designate. As noted above, he has not yet been designated by the BOP. If Mr. Castillo were required to surrender on December 2, 2020 without a federal prison designated, he would be held in the custody of the US Marshals, and most likely at one of the two federal, local holding facilities, MCC or MDC. However, both of those facilities have had issues with cases of COVID-19 recently. In fact, it is understood that at least four units at the MCC remain in quarantine, and there is some suggestion that the entire prison is on quarantine because of a breakout of COVID-19.

As has been well publicized, New York has “averaged more than 4,600 new cases over the last five days [as of November 18, 2020], more than quadruple the number it was seeing at the end of October.” *See NYC Schools Move All-Remote Thursday; Cuomo Eyes Sweeping New Restrictions*, NBCNewYork.com, November 19, 2020, <https://www.nbcnewyork.com/news/coronavirus/cuomo-warns-numbers-will-keep-climbing-as-nyc-parents-await-latest-on-schools-fate/2731256/>. As of November 17, 2020, the hospitalization rate in New York was also the highest it has been since June 9. *Id.* The same general trend is being seen in New Jersey, where last week the state had its highest number of new cases in one day since the outbreak of the pandemic in March. *See N.J. hits record number of new COVID-19 cases with 4,395 positive tests, 26 deaths*, NJ.Com Nov 14, 2020, <https://www.nj.com/coronavirus/2020/11/nj-hits-record-number-of-new-covid-19-cases-with-4395-positive-tests-26-deaths.html>. As a result, new restrictions are being put in place including limitations on indoor gatherings in New York and New Jersey. *See New Jersey Coronavirus Update: Restrictions take effect as state again tops 4,000 new COVID cases*, ABC7NY.com, November 17, 2020, <https://abc7ny.com/nj-covid-restrictions-new-jersey-coronavirus-alert-johns-hopkins-map/8034251/>; *see also Slow the Spread*, governor.ny.com, November 11, 2020, <https://www.governor.ny.gov/news/governor-cuomo-announces-restaurants-bars-other-sla-licensed-entities-must-close-person-service#:~:text=The%20Governor%20also%20announced%20that,indoor%20gatherings%20including%20Halloween%20parties>). In addition, New York has recently cancelled all in person schooling until further notice. *See COVID-19 Information and Updates*, www.schools.nyc.gov, November 20, 2020, <https://www.schools.nyc.gov/school-life/health-and-wellness/coronavirus-update#:~:text=As%20of%20November%2019%2C%202020,on%20our%20Blended%20Learning%20page>. Regrettably, experts on infectious disease predict a greater surge in our country in the next two weeks. *See The latest on the coronavirus pandemic*, CNN, Updated 3:57 PM ET, Sat November 28, 2020, <https://www.cnn.com/2020/11/27/health/us-coronavirus-friday/index.html>.

It is unfortunately clear now that the situation is currently getting more dangerous by the day. As recently as November 13, 2020, Dr. Anthony Fauci was interviewed on CBS and explained the serious concerns with the current recent upward trend in infection and hospitalization rates. *See* https://video.twimg.com/amplify_video/1327224162365157376/vid/960x540/XoZMQcKnB_4AN-kQ.mp4?tag=13in; *see also ‘A Whole lot of hurt’: Fauci warns of covid-19 surge, offers blunt assessment of Trump’s response*, The Washington Post, Oct. 31, 2020, https://www.washingtonpost.com/politics/fauci-covid-winter-forecast/2020/10/31/e3970eb0-1b8b-11eb-bb35-2dcfdab0a345_story.html. And today it was reported that country-wide there have been at least 100,000 new COVID-19 cases every day for the last 28 days straight. *See The latest on the coronavirus pandemic*, CNN, Updated 3:57 PM ET, Sat November 28, 2020, <https://www.cnn.com/2020/11/27/health/us-coronavirus-friday/index.html>.

Much has been written about the fact that jails are inevitable breeding grounds for the disease. Multiple inmates at both the MCC and MDC have reported that they are rarely given new masks but instead are required to re-use the same masks every day. The failure of some jail officers and U.S. Marshal staff to wear masks compounds the problem. And as is witnessed today

at the MCC, a breakout at a prison spreads quickly and affects many. Not only is this a problem at the MCC, where at least four units are in quarantine, but it is the trend throughout the BOP. For example, Fort Dix currently has 268 inmates with COVID-19, followed by Beaumont Low FCI in Texas with 258 positive cases and Marion USP in Illinois with 248. BOP.gov (accessed November 28, 2020). Requiring Mr. Castillo to surrender to the US Marshals without a designated facility, is particularly harsh with these conditions present at the local facilities.

The defense respectfully requests that Your Honor consider the arguments set forth herein and adjourn Mr. Castillo's December 2, 2020 surrender date for at least 30 days or more, in order that he can be properly designated by the BOP, and just as important if not more so, because of the state of COVID-19 and its resurgence currently across the country in the New York area, and in federal prisons. Maurene Comey, AUSA and Carlos Rivera, PTSO both object to this request.

Respectfully Submitted,

s/
Lorraine Gauli-Rufo, Esq.
Attorney for Bryan Castillo

CC: Maurene Comey, AUSA
Carlos Rivera, PTSO

The Court understands that Mr. Castillo has now been designated to the Camp facility at Fort Dix. The request for extension of the surrender date is denied, for substantially the reasons stated on the record at Mr. Castillo's sentencing and the reasons stated in the Government's letter of today's date. DE# 321 resolved. SO ORDERED.

/s/ Laura Taylor Swain, USDJ